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7
8 UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA
10

11 ANTONE MENDES,

Case No.: 2:18-cv-01893-APG-CWH

12 Plaintiff,

13 v.

14 ESMERALDA COUNTY; KENNETH
ELGAN an individual; and MATTHEW
15 KIRKLAND an individual;

16 Defendants.
_____/

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18 **PLAINTIFF'S MOTION TO EXTEND TIME FOR SERVICE**
19 **OF PROCESS PURSUANT TO FRCP 4(m)**

20 Plaintiff, Antone Mendes, by and through undersigned counsel Adam Levine, Esq., of the Law
21 Office of Daniel Marks, moves this Court to extend the time for service of process pursuant to FRCP
22 4(m) on Defendants Esmeralda County, Kenneth Elgan and Matthew Kirkland.

23 The grounds for Plaintiff's motion are set forth in the attached Memorandum of Points and
24 Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 FRCP 4(m) states:

3 *Time Limit for Service.* If a defendant is not served within 90 days after the complaint is
4 filed, the court – on motion or on its own after notice to the plaintiff must dismiss the
5 action without prejudice against that defendant or order state serve be made within a
6 specified time. But if the plaintiff shows good cause for the failure, the court must
7 extend the time for service for an appropriate period. This subdivision (m) does not
8 apply to service in a foreign county under Rule 4(f), 4(h)(2), or 4 (j)(1).

7 **I. BACKGROUND**

8 On October 1, 2018 Plaintiff Antone Mendes filed is Complaint [Doc. #1] and summons were
9 issued to the Defendants [Doc. #4].

10 Defendant Esmeralda County, Nevada a small county with a population of approximately 783.
11 Approximately half of the population reside in the county seat, Goldfield, Nevada. The County is
12 managed by a Board of County Commissioners. The Chairperson of the County Commission is
13 Michelle Bates (who resides in Fallon, Nevada).

14 Defendant Kenneth Elgan is the Sheriff of Esmeralda County resides in Goldfield, Nevada.

15 Defendant Matthew Kirkland is a Sergeant with the Esmeralda County Sheriff's Office resides
16 in Goldfield, Nevada.

17 Normal service of process would be sent to the Sheriff's Office in Esmeralda County and they
18 would effectuate service. However, since the Defendants in this matter are Esmeralda County, and two
19 (2) members of the Sheriff's Office (Kenneth Elgan the Sheriff and Matthew Kirkland a Sergeant)
20 service could not be effectuated normally. A request to other county's sheriff's offices was made only
21 to be informed that they could not perform the service as it was out of their jurisdiction. After several
22 weeks Mr. Christian Martinez was located to perform the service of process.

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1 **II. FAILED ATTEMPTS FOR SERVICE OF PROCESS**

2 **Esmeralda County**

3 On or about October 2, 2018 my Assistant, Glenda Guo, spoke with the Esmeralda County
4 District Attorney Robert Glennen asking if he would accept service for Esmeralda County. Mr.
5 Glennen stated that he would need to check and would get back with my office. On or about October 4,
6 2018 Ms. Guo again spoke with Mr. Glennen and was informed that he had been advised that he could
7 not accept service for the County that the County Commission itself would need to be served.

8 The Commissioners' Assistant is out of the office until after the beginning of the year. While we
9 are still making every effort to serve the Summons and Complaint in this matter upon the County it
10 appears that such service will not be accomplished until after the beginning of the year.

11 Therefore, we respectfully request for a 60 day extension to effectuate service of process on
12 Defendant Esmeralda County.

13 **Kenneth Elgan**

14 Defendant Elgan is the Sheriff of Esmeralda County. A number of attempts were made to serve
15 Mr. Elgan at the Sheriff's office by Christian Martinez but he was continually told that Sheriff Elgan
16 was not available. It was determined that Mr. Elgan was avoiding service.

17 On December 20, 2018 Christian Martinez did finally serve Kenneth Elgan at the Sheriff's
18 Office. However, upon review of the proof of service it was determined that the summons served did
19 not bear Kenneth Elgan's name but that of Esmeralda County.

20 In light of the fact that Mr. Elgan avoided service for so long, it is anticipated that he will again
21 attempt to avoid service of the summons which does bear his name. Therefore, we respectfully request
22 that a 60 day extension for service of process on Defendant Elgan.

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Matthew Kirkland

Defendant Kirkland was served on November 21, 2018. However, upon review of the proof of service it was determined that the summons served did not bear Matthew Kirkland's name but that of Esmeralda County.

Therefore, we respectfully request that a 60 day extension for service of process on Defendant Kirkland.

III. CONCLUSION

Based on the above and foregoing Plaintiff's Motion should be granted and service of process should be extended for a period of 60 days until **February 28, 2019**.


DATED this 21st day of December, 2018.

LAW OFFICE OF DANIEL MARKS

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IT IS SO ORDERED.

DATED: Dec 26, 2018


C.W. HOFFMAN, JR.
UNITED STATES MAGISTRATE JUDGE